

**Town of Mead, Colorado
SERVICES AGREEMENT**

**Service: WWTP -Rolls Royce 350KW Generator
Equipment acquisition and installation services**

THIS SERVICES AGREEMENT (“Agreement”) is made and entered into by and between the **Town of Mead**, a municipal corporation of the State of Colorado, with offices at 441 Third Street, P.O. Box 626, Mead, Colorado 80542 (the “Town”), and **Smith Power Products, Inc.**, a Delaware corporation, with a principal office address of 3065 W. California Ave., Salt Lake City, UT 84104, and having a local Colorado address of 5681 Iris Pkwy, Frederick, CO 80504 (“Contractor”) (each individually a “Party” and collectively the “Parties”).

WHEREAS, the Town requires certain services as more fully described in **Exhibit A**; and

WHEREAS, the Town desires to contract with the Contractor subject to the terms of this Agreement; and

WHEREAS, by and through Resolution No. 56-R-2023 dated July 31, 2023 (“Resolution”), the Board of Trustees authorized the acquisition of a Rolls Royce 350KW Generator from Contractor, as more specifically described in the Resolution (the “Generator”); and

WHEREAS, on August 1, 2023 the Town Manager executed that certain purchase approval summary authorizing the acquisition of the Generator (“Purchase Approval Summary”); and

WHEREAS, Town Staff has requested that Contractor provide certain labor and services related to disconnecting the existing generator at the Town’s wastewater treatment plant located east of I-25 on WCR 34 (“WWTP”), removing the old generator, and installing/connecting the Generator; and

WHEREAS, Contractor represents that it has the requisite expertise and experience to perform the services described in this Agreement,

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SERVICES

A. Description. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from Contractor’s proposal dated September 15, 2023 (“Services”), attached hereto as **Exhibit A**. **Exhibit A** is incorporated herein by this reference. A change in the Services shall not be effective unless authorized in writing and signed by the parties

in accordance with the amendment provision of this Agreement. The Parties acknowledge and agree that this Agreement supersedes and replaces the Purchase Approval Summary in its entirety.

B. Term and Termination. This Agreement shall be effective on the date of its mutual execution by the Parties and shall terminate on December 31, 2023. The Parties may mutually agree to extend the term of this Agreement in writing pursuant to the amendment provisions of this Agreement. Either the Town or the Contractor may terminate this Agreement by providing the other party with advance written notice of termination. Such notice of termination shall state the date on which the Services shall terminate, which shall be no sooner than thirty (30) days following the date of the notice of termination. Within thirty (30) days of the date of termination, Contractor may submit a final invoice for all unpaid Services completed pursuant to this Agreement prior to the date of termination. The Town will pay such final invoice within thirty (30) days of the date of the Town's receipt of the final invoice. The Town shall not be obligated to pay any invoice submitted by Contractor more than thirty (30) days after the date of termination.

C. Generator – Limited Warranty. The warranty for the Generator will be the attached Standard Two (2) Year / 3,000 Hour Basic Standby (3D), Prime (3B) and Data Center Continuous Power (3F) Limited Warranty, a copy of which is attached to this Agreement as **Exhibit B** and is incorporated herein by reference.

D. Generator Delivery. The Generator shall be delivered to the Town of Mead WWTP. Date of delivery shall be coordinated by and between the Town Representative and the Contractor Representative (as those terms are defined below).

E. Representatives and Supervision

1. Town Representative. The Town representative responsible for oversight of this Agreement and the Contractor's performance of Services hereunder shall be the Town Manager or her designee ("Town Representative"). The Town Representative shall act as the Town's primary point of contact with the Contractor.
2. Contractor Representative. The Contractor representative under this Agreement shall be Darrel Caldwell, Rolls-Royce Power Systems Engineering Sales [dcaldwell@smithppi.com, 303-927-8469] ("Contractor Representative"). The Contractor Representative shall act as the Contractor's primary point of contact with the Town. The Contractor shall not designate another person to be the Contractor Representative without prior written notice to the Town.

II. COMPENSATION

A. Payment. In consideration for performance of the Services by the Contractor, the Town shall pay Contractor an amount not to exceed **one hundred sixteen thousand seventy-**

three dollars (\$116,073.00) (“Contractor Fee”). The breakdown of the Contractor Fee is set forth in **Exhibit A**.

B. Method of Payment. Contractor may invoice the Town no more often than once every thirty (30) calendar days for Services completed. The Town shall pay each invoice within thirty (30) days of the Town’s receipt of the invoice unless the Parties agree upon another time period in writing. Notwithstanding the foregoing, upon termination of this Agreement by one or both parties, the Town shall pay the final invoice pursuant to Section I of this Agreement. All payments under this Agreement shall be by check made payable to Contractor.

C. Other Expenses. Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor and shall not be billed or invoiced to the Town and shall not be paid by the Town.

III. INSURANCE

Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor’s minimum statutory and legal obligations arising under this Agreement. Such insurance shall name the Town as a Certificate Holder. Contractor shall provide the Town with a certificate of insurance prior to the commencement of the services under this Agreement, and Contractor shall provide the Town a copy of such insurance policy or policies upon request by the Town. Contractor understands and agrees that the Town’s insurance does not provide coverage for Contractor. The Contractor’s failure to obtain or maintain Contractor’s own policies of insurance for the duration of this Agreement and for any travel or other activities related to the Services shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance under this Agreement.

IV. INDEMNIFICATION

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representatives, agents, employees, and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

V. MISCELLANEOUS

A. **Independent Contractor.** Contractor understands and agrees that Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the Town. Contractor acknowledges that it is not on Town's payroll or social security or tax withholding rolls. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is an employee of Town for any purposes. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment.

B. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

C. **Integration and Modification.** This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications, including but not limited to the Town's Purchase Approval Summary. This Agreement may only be modified or amended upon written agreement signed by the Parties.

D. **Notice.** Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent via pre-paid, first class United States Mail, to the party at the address set forth below.

If to the Town:

If to Contractor:

Town of Mead Attn: Town Manager 441 Third Street P.O. Box 626 Mead, Colorado 80542	Smith Power Products, Inc. Attn: Darrel Caldwell 5681 Iris Pkwy Frederick, CO 80504
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<p>With Copy to:</p> <p>Michow Guckenberger McAskin LLP Attn: Mead Town Attorney 5299 DTC Blvd, Suite 300 Greenwood Village, Colorado 80111</p>	<p>With Copy to:</p> <p>Smith Power Products, Inc. 3065 W. California Ave. Salt Lake City, UT 84104</p>
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E. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

F. Assignment. Neither this Agreement nor any of the rights or obligations of the parties hereto, shall be assigned by either Party without the written consent of the other.

G. Rights and Remedies. Any rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted.

H. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section V shall not authorize assignment.

I. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

J. Survival. Any terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the Termination Date of the Agreement shall survive such Termination Date and shall be enforceable in the event of a failure to perform or comply, including but not limited to the indemnification, independent contractor, governing law and venue, and rights and remedies provisions of this Agreement.

K. Attorneys' Fees. If the Contractor breaches this Agreement, then it shall pay the Town's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

L. Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the Town hereunder shall extend only

to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

M. Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

N. Force Majeure. Neither the Contractor nor the Town shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by “force majeure.” As used in this Agreement, “force majeure” means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

O. Protection of Personal Identifying Information. In the event the Services include or require the Town to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, *et seq.*, relating to third-party services providers.

P. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the Town of Mead and the Contractor and bind their respective entities.

Q. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

[signature pages follow]

THIS AGREEMENT is executed and made effective as provided below.

TOWN OF MEAD, COLORADO

By: _____
Helen Migchelbrink, Town Manager

Date of execution: _____, 2023

ATTEST:

Mary Strutt, MMC, Town Clerk

REVIEWED BY (*excluding exhibits*):

Marcus McAskin, Town Attorney

EXHIBIT A
SCOPE OF WORK

**[SPPI Proposal dated September 15, 2023, twelve (12) pages]
[attached]**



A Rolls-Royce solution



Date: September 15, 2023

Reference: Town of Mead - Stock DS350 - UI 30645

We are pleased to offer the following quote for the above project:

- Colorado has adopted NEC 2020. Please see notes 7 & 8 below for clarification/exception.
- Proposal is priced for delivery in 2023. Pricing is based on 30 day quote expiration.
- Due to complete 11/01/2023.

QUANTITY	EQUIPMENT DESCRIPTION	PRICE EACH	TOTAL PRICE
1	Rolls-Royce 350kW Generator Set M/N DS350 Diesel Fuel Derate: 350kW @ 5280 Feet, 104°F 120/240 Volt, 3 Phase, 60 HZ, 1800 RPM Genset Dry Assembly Weight: 14,674 lbs.	Included	Included
1	Freight, Delivery to Site, Initial Fuel Tank Fill and Factory Technician Start-Up w/ Site Load Bank Test	Included	Included
		TOTAL (less tax)	\$100,573.00
INSTALL	CE Power disconnect existing genset. SPPI scope includes removal of existing and placement of new generator on owner modified concrete housekeeping pad. CEP reconnect system to new generator set, reusing conduit/conductors (part or in-full), reconnect shore power to accessories, SPPI terminate low voltage connections for controls/alarms. *Excludes all/any concrete work, permitting/engineering, existing site fuel contamination clean-up.	\$32,500.00	\$32,500.00
CREDIT	Owner performs all modifications to existing concrete housekeeping pad.	(\$8,500.00)	(\$8,500.00)
CREDIT	SPPI Accepts terms to remove from site the existing Generac generator from site and takes possession heretofore under any condition turned over at removal.	(\$8,500.00)	(\$8,500.00)
		TOTAL (less tax)	\$116,073.00

Equipment Description:

Generator:

Application	Emergency Standby (3D)
Frequency	60 Hz
Generator Voltage	240 V

Phase	3 Phase
Unit Specification	UL2200
IBC Seismic Certification	Without IBC
OSHPD Certification	Without OSHPD
Engine Model	JD6135HFG84 (24volts)
Exhaust Emissions (EPA)	EPA Stationary EMERG T3 (40CFR60)
Radiator Design Temperature	50°C
Temp Rise	130°
Power Output	350 kW
Full Load Amps	1052
Generator Frame and Wire Qty	433/6216 (12 Wire)
Generator Wire Configuration	Delta
OPU/HSD	Level 3 - Maximum Sound Attenuation
Fuel Tank	With Fuel Tank
Control panel	With MGC Controller
Circuit Breaker Options	Single Circuit Breaker
Breaker Wire Color Scheme	Standard Breaker Wire Color Scheme
Paralleling	No Parallel Operation
Acceptance testing	Factory acceptance
Publications	Standard Publications (English)
Country of Operation	USA / Canada
Emission cert. authority	18 US EPA Agency

1 SYSTEM CONFIGURATION

1.1 System Description

System Description: DG06RJ225A1N

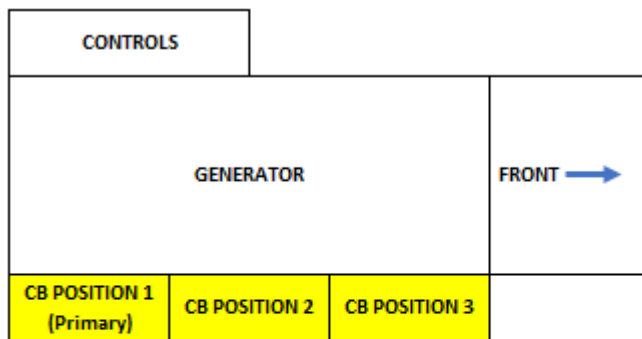
1.2 Cooling Package

50 Deg C Cooling System

- Closed loop, liquid cooled, with radiator factory mounted on engine-generator set mounting frame and integral engine-driven coolant pump

1.3 Circuit Breaker

Circuit Breaker Mounted Right Side



Top View

Right Side
left Side

CB Position 1/CB Position 2/CB Position 3
Controls

* For technical data refer to the circuit breaker enclosure data sheets located on the Business Portal

Service Entrance Rated

Circuit Breaker Position 1:

1200 AMP 3P 100% LSI CB SQ-D P-FRAME PGL36120CU33A

Circuit Breaker #1 Accessories:

Auxillary Contact (OF1)

LSI Breaker Trip:

- LSI breakers provide protection from long time overload, short time overload and instantaneous short circuit events. Specific overload current values and time delays vary with breaker type and trip unit.

Standard Breaker Wire Scheme:

- Phase 1 (A) is Black label "L1"
- Phase 2 (B) is Orange label "L2"
- Phase 3 (C) is Blue label "L3"
- Neutral is White label "NEU"

1.4 Starting Aids

Starting Battery (Group 31), Cables & Battery Rack

- Battery Rack mounted and installed
- Battery Group 31 Starting Battery filled with acid
- Qty 2

Battery Charger: MicroGenius 2 10A

- 300W
- 10 Amp
- 24V
- NFPA 110
- M3-22-1210-E

Battery Charger Mounted & DC Wired

Note - This option will be factory-wired to the distribution panel (if selected)

Coolant Preheater

- -20 Deg F Coolant Preheater (240V 1PH - 4000W)
- Model: CL140210-200
- Qty 1

All coolant preheaters have the AC connection wired to the distribution panel (if distribution panel is selected on order) EXCEPT for 480V or 3 Phase water heaters.

1.5 Genset Enclosure

Level 3 Genset Enclosure

- Weatherproof enclosure constructed of heavy gauge steel or aluminum with fixed storm proof panels. Enclosure consists of a bolted and welded construction. Hinged, lockable double-door access on both sides of the enclosure. Includes UL 94 HF-1 compliant, 1.5" thick sound attenuated foam insulation installed where applicable.

Steel Enclosure Type

130mph Wind Rated Steel

Exhaust Scoop - Steel

Sound Attenuation Kit

Roof Foam Kit

Intake Louver (Steel)

Distribution Panel

- 125A 120/240VAC 1PH UL- Listed
- 3R Enclosure

Unit Includes One (1) Convenience Receptacle

Convenience Receptacle is mounted on the same side of the outlet box as the Control Panel/No Control Panel options.

Note - This option will be factory-wired to the distribution panel (if selected)

1.6 Vibration Isolation

SUA63015 Pad Isolators

- ¼ inch thick elastomeric pad in rectangular shape placed under the base frame at each of the pre-drilled isolator mounting holes

2 ENGINE CONFIGURATION

2.1 Engine System

Engine Model: JD 6135HFG84

Oil Drain

Note Emission Compliance:

The engines and/or systems, may only be certified to comply with the required country or region specific emission regulations. Where applicable, the engines and/or systems are only certified to those specific emission regulations/standards which are clearly stated in the respective RRPS/MTU defined technical specifications. It is the customer's sole responsibility to ensure that the export/import, installation and use of the engine and/or system complies with the applicable emissions regulations in the country or region where the engine and/or system will be used.

2.2 Exhaust System

Unit-Mounted Silencer 6"

- Silencer Model Number: JIIJ0Z-06SB-1-18060014 (Qty 1)
- Silencer Model Number: TCGEPZ-06SB06PF-1-18060030 (Qty 1)

2.3 FUEL SYSTEM

Non-Extended Fuel Tank matches the genset base footprint

Tank Includes Spill Fill Containment (5 Gallon capacity)

24 HR 700 Gallon Non-Extended Sub Base Fuel Tank

Fuel Water Separator Standard (Single)

Fuel Water Separator

- Water Detection Sensor

2.4 Air Intake System

Air Filter (Standard)

MTU Air Filter

- SUA86885
- Qty 1

MTU Air Filter

- XG3012100019
- Qty 1

3 GENERATOR CONFIGURATION

3.1 Generator Specification

PMG with DVR 2400

- True RMS Sensing - One or Three Phase Connect. Senses 100 to 600 volts $\pm 10\%$ at 50/60 Hertz. Patented circuitry senses true RMS voltage rather than average for superior load regulation.

Generator Model Number: 433PSL7516 (Base Model: 433PSL6216)

Measuring CT

4 CONTROL PANEL CONFIGURATION

4.1 Control panel

MGC- 2000 Series

- MTU Onsite Energy's Digital Genset Controller MGC-2000 series is a highly advanced integrated generator set control system. The MGC-2000 series is perfectly focused, combining rugged construction and microprocessor technology to offer a product that will hold up to almost any environment and flexible enough to meet your application's needs. This device provides generator set control, transfer switch control, metering, protection, and programmable logic in a simple, easy-to-use, reliable, rugged, and cost effective package.

Modbus RTU

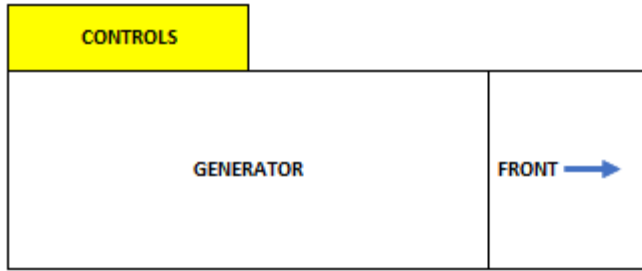
- ModBus RTU connects the MGC to Programmable Logic Controllers by means of communication transmission over serial lines (RS485).

Modem RS-232

- The MGC controller includes an external modem interface permitting an external modem to be connected to the controller via RS-232. A dial-out modem enables remote control, monitoring, and setting of the controller. When an alarm or pre-alarm condition occurs, the controller can dial up to four telephone numbers in sequence until an answer is received and the condition is annunciated.
 - Note: Only an external modem interface is provided. The external modem must be supplied by a third party

Control Panel Mounting

Control Panel Mounted LH Side



Top View Right Side
 left Side Controls

* For technical data refer to the circuit breaker enclosure data sheets located on the Business Portal

(4) Relay Option

The 4-relay board includes (4) 10 amp form C relays customizable for user defined functionality requirements. Standard outputs are as follows:

1. Engine Run
2. Engine Run
3. Engine Fail
4. Minor Alarm

RDP-110 Annunciator Panel

- The RDP-110 is a remote annunciation device used in conjunction with the MGC family of digital generator set controllers to provide remote annunciation of the emergency standby generator system. This panel allows for two programmable alarms, two programmable pre-alarms, and is compatible with NFPA 110. The MGC detects an alarm or pre-alarm condition and communicates via RS-485 to the RDP-110.
- Unit can be flush or surface mounted.

1 Remote Annunciator

No Parallel Operation

5 SERVICES AND AFTER SALES SUPPLY

5.1 Warranty

General Terms and Conditions of Sale, Warranty and After Sales Supply
 Our offer is based on the attached General Terms and Conditions of Sale for MTU Products (Rev. V-601-1803 MUS & MOE) and the Warranty will be the attached Standard Two (2) Year / 3,000 Hour Basic Standby (3D), Prime (3B), and Data Center Continuous Power (DCCP) (3F) Limited Warranty (SYS-M-GEN-S-026).

6 MISCELLANEOUS

6.1 Painting

Paint Color: RAL 7001 Grey

6.2 Documentation

English

1 Flash Drive

6.3 Additional Options

Mechanical Drawing: Genset Dimensional HSD

- XZG3000100136

Mechanical Drawing: Genset Dimensional HSD

- XZG3000100137

Mechanical Drawing: Fuel Tank

- XZG3000100138

Electrical Drawing: Engine

- XZG30K0000045

Electrical Drawing: Generator

- XZG30K0000048

Electrical Drawing: Breaker Options

- XZG30K0000032

Electrical Drawing: Customer Connections

- XZG30K0000033

Electrical Drawing: MGC 2020

- XZG3064400019

Electrical Drawing: Distribution Panel

- XZG30K0000034

Electrical Drawing: Options Sheet

- XZG30K0000037

Quantity (1) Service Filter Kit:

JD 6135 Service Filter Kit - Standard Air/Oil/Fuel/Single Fuel-Water Separator

- XG3012100019 MTU Standard Air Filter (Qty 1)
- XG3018300005 MTU Oil Filter (Qty 1)
- SUA94008 MTU Fuel Filter - Primary (Qty 1)
- SUA940091 MTU Fuel Filter - Secondary (Qty 1)
- SUA120166 MTU Fuel Filter - Fuel-Water Separator Filter (Qty 1)

7 FUNCTIONAL TESTING

7.1 Acceptance Testing

Standard Commercial Test

8 SHIPPING CONDITIONS

8.1 Freight

Ship unit with fluids installed

ATS:

Notes

Pricing includes generators, delivery, off-loading (*see Note 4 exception for indoor installations), initial fuel fill (if applicable,) and two day start-up w/ NFPA 110 two hour (unless otherwise specified) load bank test.

Prices valid for 30 days from above date

FOB: Jobsite

- 1) *Smith Power Products will provide a free inspection of the generator set assembly and associated equipment provided by Smith Power Products at the six month interval from the official warranty start-up date. This inspection is limited to visual inspection of the system. With permission from owner, the unit may be ran to ensure correct operation. If any deficiencies arise during the inspection, the owner will be made aware and any required corrective action will be discussed before proceeding.*

Inspection will be performed during regular business hours. Inspections are limited to 100 mile round trip from Denver unless coordinated scheduling allows for further distances.

- 2) *General wiring requirements include, but may not be limited to the following:*
 - *Six (6) #16's between generator controller connection box and each automatic transfer switch.*
 - *Two (2) #16's for 12/24VDC power and one pair of #18's (twisted, stranded, shielded pair) for communication between generator controller connection box and the generator remote annunciator panel.*
 - *Two (2) #16's for communication between generator low voltage connection box and to each generator remote emergency stop (EPO) location.*
 - *If a remote fuel fill station is included in project scope, twelve (12) #16's for communication between generator low voltage connection box and the generator remote fuel fill location.*
 - *If a NEC 700.3 (f) compliant MTS generator docking station is included in project scope, six (6) #16's for communication between generator controller, (1) 120VAC 20A circuit for temporary generator battery charger, (1) 120-240VAC 20-40A circuit for temporary generator block heater (size determined by requirements)*
 - *If there are to be requirements for contact annunciation at the fire alarm panel or elevator controller, those requirements should be confirmed "by others" and notify Smith Power of those requirements.*
 - *Most applications without a unit mounted load center require three (3) 120VAC 15-20A circuits for block heater, battery charger, battery heater, and a unit mounted 120VAC receptacle.*
 - *Use only twisted, stranded cable. **No solid core.***
 - *Specific requirements should be clarified through the submittal process.*
- 3) *Pricing does not include any applicable taxes & is subject to change without further notice. Pricing is valid for 90 days.*
- 4) *Cancellation after approval to order is 20% of project total.*
- 5) *Based on unknown site conditions. Scope of supply above includes fuel for testing procedures and crane services to set the generator on to the concrete pad. Should site access be limited, or obstacles prove difficult, additional costs may be required. Crane reach limited to a single pick and within 50' of the crane. Rigging/millwright services excluded for open generator installations inside of a building structure.*
- 6) *Please note the circuit breakers listed above are Square D type breaker installed at the factory standard. At this time, Smith Power Products, Inc. has been given no information concerning specific circuit breakers necessary for selective coordination. If applicable, additional pricing will be made available for specific breakers, either factory offered or non-factory standard, upon direction of Selective Coordination Study completed before or after bid date. Note, Selective Coordination Study not included in this proposal. Rolls-Royce standard-type breaker information available upon request for inclusion with proposal.*
- 7) *While Smith Power Products, Inc. is not NETA Certified, we test in accordance to NETA Standards.*
- 8) *Scope of supply above does not include anchor bolts (if required). The size, quantity, and type of anchors shall be determined by others.*
- 9) *Colorado has adopted NEC 2020 but not all jurisdictions have implemented. This includes NEC 2020 240.87 for Energy Reduction Maintenance Setting (ERMS) Switch requirements. This NEC requirement is for ERMS on circuit breakers 1200A+. As these changes slowly get implemented across various jurisdictions, Smith Power Products, Inc. takes exception to these requirements unless clearly marked on project one line diagrams as being required. The cost adder to provide is \$5,200.00.*

10) 2020 NEC 700.10 requires monitoring of the gen set start circuit (not continuous monitoring as previously listed in the 2017 NEC). The code has evolved from “continuous monitoring” to “monitoring” since it was written. Our response to this Code requirement is a logical and practical combination of parts and procedures without introducing unnecessary single points of failure and complex maintenance procedures. The electrical contractor will run one additional gen set start wire per ATS (per Figure 12 or 13– Start Circuit Monitoring.pdf). This simple and straight forward monitoring method carefully coupled with a monthly gen set testing program elegantly addresses the 2020 NEC 700.10 requirements.

11) Unless noted in the equipment description area above, this proposal does not include equipment to comply with the recently adopted changes adopted in 2017 to the National Electric Code, NEC 700.3 (F). For more information and pricing for a specific project, please consult with Smith Power Products, Inc.

NEW RULE: NEC 700.3 (F) - Temporary Source of Power for Maintenance or Repair of the Alternate Source of Power. If the emergency system relies on a single alternate source of power, which will be disabled for maintenance or repair, the emergency system shall include permanent switching means to connect a portable or temporary alternate source of power, which shall be available for the duration of the maintenance or repair. The permanent switching means to connect a portable or temporary alternate source of power shall comply with the following:

- a) Connection to the portable or temporary alternate source of power shall not require modification of the permanent system wiring.
- b) Transfer of power between the normal power source and the emergency power source shall be in accordance with 700.12
- c) The connection point for the portable or temporary alternate source shall be marked with the phase rotation and system bonding requirements.
- d) Mechanical or electrical interlocking shall prevent inadvertent interconnection of power sources.
- e) The switching means shall include a contact point that shall annunciate at a location remote from the generator or at another facility monitoring system to indicate that the permanent emergency source is disconnected from the emergency system.
- f) It shall be permissible to utilize manual switching to switch from the permanent source of power to the portable or temporary alternate source of power and to utilize the switching means for connection of a load bank.

12) *ATS Remote Annunciator:* As standard practice, a separate remote annunciator for the automatic transfer switch(es) is not included. Per the IBC, Section 911, Fire Command Centers are required in high-rise buildings, usually over 75' in height. The Fire Command Center requires emergency and standby power status indicators to be located in the fire command center room. NFPA 110 requires annunciation for Level 1 emergency power systems with the annunciation being local (located on the equipment) and facility remote annunciation (located on-site but not in the room where the equipment is) or network remote annunciation (off-site.) The generator remote annunciator satisfies this requirement with the EPS Supplying Load indication. ATS Remote annunciator pricing is available on a per-project basis as an adder unless otherwise indicated.

13) *Generator clearances from building structures, building openings, & property lines must be verified for legality. It is the intent of Smith Power Products to provide accurate and comprehensive information. While the specific details below are characteristic of Denver Fire Department requirements, many AHJ's have adopted similar requirements. The requirements of local AHJ's must always be evaluated and may align with those below from [DFD's Generator Install Guideline](#).*

- a) *NFPA 37 dictates that a generator set may not be installed less than 5 feet from a combustible building structure. A diesel generator may be installed no less than 3 feet from a non-combustible building structure providing the structure has either a, 1) minimum one-hour fire rating or, 2) non-combustible generator enclosure is provided.*
- b) *Standard interpretation of NFPA 37 (22.4.1.1(a)) rules for diesel fuel tanks include a 5 feet set back from a property line for tanks 0-275 gallons, 10 feet for 276-750 gallons, and 15 feet for 751-*

12,000 gallons. This may be reduced to no less than 5 feet with approval from the AHJ with additional protective measures.

- c) The diesel fuel tank normal vent line must be extended 12 feet above grade and not be terminated within 5 feet of any building opening or property line that can be built upon.
 - i) Should all or part of the generator enc/tank be installed under the footprint of an existing building structure, including indoor installations or outdoor installations where a weather protective enclosure is included, all three fuel tank vents must be extended to 12 feet above grade or higher and not be terminated within 5 feet of any building opening or property line that can be built upon.
 - ii) Smith Power Products, Inc. excludes providing or installing fuel tank vent extensions indicated by letter "i" above.
 - d) For installations where the generator assembly will be installed in close proximity to a building structure, or under the footprint of an existing building structure, including indoor installations or outdoor installations where a weather protective enclosure is included, the generator exhaust must be extended to at least 10 feet above grade or higher, 10 feet from any operable building opening (window/door/intake louver,) zero (0) feet from an inoperable opening/exhaust louver and not be terminated within 5 feet or property line that can be built upon. Should the AHJ require the exhaust to be extended, Smith Power Products, Inc. may be able to provide the extension within our scope at an additional cost. However, any extension that requires anchoring or support to a surrounding structure is excluded by Smith Power Products, Inc.. A qualified installer must be contracted to design and install.
 - e) The generator may not be installed closer than 10 feet from a utility transformer unless a 2 hour fire rated barrier installed between the generator and transformer. [Xcel Installation Standards](#)
- 14) Unless otherwise described, scope of supply above does not include any required stairs/platforms required to gain access/entry into the enclosure, nor to maintain any NEC clearances as it relates to CB handle height.

Indoor

- 15) Smith Power Products has included a remote fuel fill station & 95% overfill prevention valve in the base price of our proposal for this application. The remote fuel fill station will be located on the exterior of the building which will include spill containment and alarm panel for remote fuel level indication. Smith Power Products, Inc. believes that this will be a requirement for this project and should be included as part of the generator scope for uniformity of the system.
- a) The deduct to remove from Smith Power Products, Inc scope is **(\$3,250.00)**.
 - b) Please note that the required fuel piping between the generator and remote fill station must be provided by the installing Mechanical Contractor.
 - c) There is no supplemental fuel pump (if necessary) included with the remote fill station. If it is necessary, it is assumed the installing Mechanical/Piping Contractor will provide this.
 - d) The remote fuel fill station must be located 5 feet above grade and cannot be located within 5 feet of any operable building opening (door/window/intake louvers.)
- 16) Scope of supply above includes a UL-142 local freestanding day tank to be located inside the generator room. In indoor rooms that store diesel fuel, the gallon limitation is 660 gallons and the room must carry a minimum two-hour fire rating. Additional fuel capacity may be allowed with a higher fire rating and AHJ approval.
- a) Please note that the AHJ may require additional protective measures such as a UL-2085 fuel tank. (Please note that a UL-2085 fuel tank will be significantly more expensive than what is included w/ this scope of supply.)
 - b) All required fuel piping from a remote main/bulk fuel tank or remote fuel fill station to the generator day tank will need to be provided by the installing mechanical contractor.
 - c) All required vent piping, terminations, and miscellaneous appurtenances for connection to the generator day tank will need to be provided by the installing Mechanical contractor.

- d) *In a design where a main/bulk fuel tank is provided, it is assumed the provider of the main/bulk storage tank will also include a mounted fuel supply pump. The main/bulk mounted supply pump will need push fuel to the Smith Power Products, Inc. provided local day tank. In this design, a return fuel pump mounted at the local freestanding day tank may be required to push fuel back to the main/bulk storage tank.*
- 17) *Scope of supply above includes a UL-142 sub-base fuel storage tank which will be installed under the generator assembly. In indoor rooms that store diesel fuel, the gallon limitation is 660 gallons and the room must carry a minimum two-hour fire rating. Additional fuel capacity may be allowed with a higher fire rating and AHJ approval.*
- a) *Please note that the AHJ may require additional protective measures such as a UL-2085 fuel tank. (Please note that a UL-2085 fuel tank will be significantly more expensive than what is included w/ this scope of supply.)*
- b) *All required fuel piping from a remote main/bulk fuel tank or remote fuel fill station to the generator sub-base fuel storage tank will need to be provided by the installing mechanical contractor.*
- c) *All required vent piping, terminations, and miscellaneous appurtenances for connection to the generator sub-base fuel storage tank will need to be provided by the installing Mechanical contractor.*
- d) *In a design where a main/bulk fuel tank is provided, it is assumed the provider of the main/bulk storage tank will also include a mounted fuel supply pump. The main/bulk mounted supply pump will need push fuel to the Smith Power Products, Inc. provided sub-base fuel storage tank. In this design, a return fuel pump mounted at the sub-base fuel storage tank may be required to push fuel back to the main/bulk storage tank.*
- 18) *Scope of supply above includes a UL-142 main/bulk fuel storage tank which will be installed in an adjacent room to the generator or external to the building. The tank is of UL-142 construction & will include a supply pump.*
- a) *Please note that the AHJ may require additional protective measures such as a UL-2085 fuel tank. (Please note that a UL-2085 fuel tank will be significantly more expensive than what is included w/ this scope of supply.)*
- b) *All required fuel piping from a remote main/bulk fuel tank or remote fuel fill station to the generator sub-base fuel storage tank or local freestanding day tank will need to be provided by the installing mechanical contractor.*
- c) *All required vent piping, terminations, and miscellaneous appurtenances for connection to the generator main/bulk fuel storage tank will need to be provided by the installing Mechanical contractor.*
- d) *In a design where a main/bulk fuel tank is provided, it is assumed the provider of the main/bulk storage tank will also include a mounted fuel supply pump. The main/bulk mounted supply pump will need push fuel to the Smith Power Products, Inc. provided sub-base fuel storage tank. In this design, a return fuel pump mounted at the sub-base fuel storage tank or local freestanding day tank may be required to push fuel back to the main/bulk storage tank.*
- 19) *Scope of supply above includes a critical grade generator exhaust silencer & flex connection that will be supplied loose for the Mechanical contractor's installation inside the generator room.*
- a) *Scope of supply includes gaskets & bolt kits for the supplied flex connections; all others gaskets and fasteners will need to be provided by the Mechanical contractor.*
- b) *Scope of supply above does not include any required wall/ roof thimbles for penetration to the exterior of the structure. This is to be supplied by the installing Mechanical Contractor.*
- c) *Scope of supply does not include any required exhaust piping; exhaust insulation, or any additional exhaust accessories. This is to be supplied by the installing Mechanical Contractor.*
- d) *Scope of supply does not include exhaust system installation. This is to be supplied by the installing Mechanical Contractor.*

Terms and Conditions

Net 30 days, subject to review and approval by our Credit Dept. Payment obligations are not dependent or contingent upon the manner in which purchaser may receive payment from others. No retainage against this order will be permitted unless agreed to ahead of time. Warranty is invalid without factory start up.

Start-Up will be done during normal business hours. Additional charges will be applied to start ups requested on weekends or off normal business hours.

Sincerely,

Darrell Caldwell

Rolls-Royce Power Systems Engineering Sales
Smith Power Products, Inc.
303-927-8469
dcaldwell@smithppi.com

Ryan Davis

Rolls-Royce Power Systems Engineering Sales
Smith Power Products, Inc.
(720) 340-9067
rdavis@smithppi.com

Nick Paolo

Rolls-Royce Power Systems – Business Development Engineer
Smith Power Products, Inc.
(303) 810-1085
npaolo@smithppi.com

Customer Approval:

Acceptance of Quote

Prior to ordering equipment or services, please sign and return this proposal along with your company's purchase order as a confirmation of the above terms and conditions.

EXHIBIT B
LIMITED WARRANTY

[Generator – Limited Warranty, four (4) pages]
[attached]



MTU AMERICA INC.

Two (2) Year / 3,000 Hour Basic Limited Warranty
Standby (3D) / Prime (3B) / Data Center Continuous Power (3F)

MTU America Inc. issues the following express Limited Warranty subject to the following terms, conditions, and limitations:

An original consumer ("Owner") who purchases an MTU engine generator set ("Product") is entitled to coverage under this Limited Warranty. MTU America Inc. warrants to the Owner that the Product is free of defects in material and workmanship and will perform under normal use and service from valid start-up performed by MTU America Inc. Any nonconformity to the foregoing is defined as a Warrantable Defect. This Limited Warranty applies to Product shipped by MTU America Inc. after January 1, 2014.

1. Limited Warranty Periods

Limited Warranty Period. The Limited Warranty Period for a Warrantable Defect in the Product is twenty-four (24) months after the first commissioning of the Product. In all cases, the Limited Warranty period will expire not later than thirty-six (36) months from the date of shipment from the MTU America Inc. Mankato, MN facility or after 3,000 operation hours, whichever occurs first.

Accessories Coverage Period. The Accessories Coverage Period for a Warrantable Defect in cords, receptacles, cord reels, gas flex pipes, housing lights, space heaters, and associated equipment ("Accessories") is twelve (12) months from the date of shipment from MTU America Inc. Mankato, MN facility.

MTU America Inc. warranty obligations under this Limited Warranty are contingent upon distributor completing the following:

- (a) The MTU America Inc. warranty and the *Start-Up Validation and Pre-Inspection Form*. Return both to MTU America Inc. within sixty (60) days of the start-up date; and
- (b) The engine registration form (when applicable). Return to the manufacturer as stated in the engine registration form instructions.

2. MTU America Inc. Responsibilities

If a Warrantable Defect is found during the Limited Warranty Period and/or the Accessories Coverage Period, and provided the Owner has complied with its obligations under Section 3, MTU America Inc. will, during normal working hours, through an MTU authorized distributor, dealer, or service outlet, perform some or all of the following:

- (a) Repair or replace, at the sole election of MTU America Inc., the defective part with a new or remanufactured replacement part;
- (b) Provide reasonable or customary labor needed to correct the Warrantable Defect;
- (c) Provide technician travel time of 400 miles to and from the closest MTU authorized distributor, dealer, or service outlet to the Product location;
- (d) Part removal and re-installation, if necessary and as solely determined by MTU America Inc.

The obligation to repair or replace defective parts by MTU America Inc. does not include responsibility for reimbursement of incidental or consequential costs. If MTU America Inc. repairs or replaces an Accessory, part, or Product under this Limited Warranty, the repaired or replaced Accessory, part, or Product assumes the unexpired portion of the warranty period remaining from the original Accessory, part, or Product. Repair or replacement of an Accessory, part, or Product will not extend the term of the original Limited Warranty Period or Accessories Coverage Period. Parts or Product replaced shall become the property of MTU America Inc.

MTU America Inc. Two (2) Year / 3,000 Hour Basic Standby Limited Warranty Standby (3D) / Prime (3B) / Data Center Continuous Power (3F)

Failure of MTU America Inc. to enforce any of the terms or conditions stated herein shall not be construed as a waiver of such provision or of any other terms and conditions of this Limited Warranty.

3. Owner Responsibilities

During the Limited Warranty Period and Accessories Coverage Period, the Owner is responsible for, and MTU America Inc. will not reimburse for the following:

- (a) Battery;
- (b) Premium or overtime labor costs;
- (c) Labor and material costs for Product removal and reinstallation;
- (d) Any special access fees required to gain access to MTU equipment, without limitation, training or safety policy requirement to gain access;
- (e) Transportation costs or travel expenses related to delivery of the Product to the designated distributor, dealer, or service outlet;
- (f) Incidental and consequential costs, damages, or administrative expenses of whatever nature;
- (g) Non-Product repairs, vehicle damage, "downtime" expenses, cargo damage, fines, lost income, any business costs of any kind, Owner's travel expenses, and other losses resulting from a Warrantable Defect;
- (h) Shipping charges for replacement parts/Products in excess of those which are usual and customary; or
- (i) Local taxes, if applicable.

In addition, Owner must:

- (a) Operate, use, and maintain the Product in accordance with the applicable Owner's manual and/or any other manuals specified by MTU America Inc., including without limitation handling, inspection, servicing, or operating instructions;
- (b) Promptly notify MTU America Inc. or its authorized representative of a Warrantable Defect and make the Product available for repair;
- (c) Comply with MTU America Inc. or its authorized representative's reasonable directions regarding the timing, sequence, and location of warranty repairs and make the Product available for inspection;
- (d) Perform all required maintenance and maintain and provide proof that all required maintenance has been performed;
- (e) Use MTU specified parts, components, and consumables;
- (f) Promptly return to MTU America Inc. all parts replaced under this Limited Warranty;
- (g) Comply with MTU America Inc. long term storage guidelines, if applicable, and maintain and provide proof of compliance;
- (h) Routinely exercise the Product in accordance with operating instructions;
- (i) Install the Product in accordance with the installation guide provided; and
- (j) Reimburse MTU America Inc. for all costs incurred in providing warranty service where, following examination, the request or claim for warranty coverage proves to be unfounded or excluded, as well as all incidental costs including those incurred investigating the claim.

4. Limitations

MTU America Inc. is not responsible, and this Limited Warranty is not available under any circumstances, for any of the following:

- (a) Failure of Owner to fulfill its obligations under Section 3;
- (b) Failure of Owner to follow MTU America Inc. instructions for Product stored by Owner longer than 180 days from date of shipment from the MTU America Inc. Mankato, MN facility;
- (c) Defects caused by adjustments made by Owner to the fuel system or governor system;

MTU America Inc. Two (2) Year / 3,000 Hour Basic Standby Limited Warranty Standby (3D) / Prime (3B) / Data Center Continuous Power (3F)

- (d) Defects which were obvious or capable of being identified by reasonable inspection and were not reported to MTU America Inc. within a reasonable time;
- (e) Rental equipment used during warranty work;
- (f) Defects caused or potentially caused by service work performed by non-MTU authorized service providers and/or the use of non-genuine MTU parts;
- (g) Defects resulting from natural wear and tear, external action, negligence, natural disasters, accidents, incorrect use, improper handling or storage, inadequate corrosion-proofing, incorrect assembly or installation, or modification of the Product;
- (h) Defects resulting from abuse or neglect, including unauthorized modifications to the Product;
- (i) Repair or any use or installation which MTU America Inc., in its sole discretion, determines to be improper;
- (j) Defects caused by incorrect maintenance;
- (k) Defects resulting from Owner's delay in making the Product available after being notified of a potential problem or Owner's failure to take immediate measures to avoid or mitigate damage;
- (l) Damage caused by shipping;
- (m) Repair of parts sold by MTU America Inc. that are warranted directly to the Owner by the respective part's manufacturer;
- (n) Misapplication of the Product;
- (o) Diesel engine "wet stacking" due to lightly loaded diesel engines;
- (p) Acts of nature or acts of God;
- (q) Any failure, other than those resulting from a defect in material or factory workmanship of the Product;
- (r) Use of the Product for purposes other than those for which it was intended, including without limitation use of the Product under extraordinary operating conditions not made known to MTU America Inc. in writing at the time of the order; or
- (s) Material provided by or a design specified by the Owner.

5. Software Warranty. Where software is included in the Product, MTU America Inc. warrants to the Owner that 1) the software will be substantially free from material program errors and material defects in material and workmanship, and that 2) it shall function substantially in accordance with MTU America Inc. specification at the time of dispatch from the MTU America Inc. manufacturing facility. MTU America Inc. does not warrant that the software is error-free or free from "bugs" as commonly categorized by the computer industry. MTU America Inc. shall, during the Limited Warranty Period, endeavor to remedy at its cost, in its sole discretion, by repair or replacement of any material program errors or material defects of which Owner has promptly notified MTU America Inc. MTU America Inc., at its option, may elect to provide the most current software at no cost, and in such case MTU America Inc. will not cover the cost to install the applicable updated software. MTU America Inc. shall have no obligation with respect to any nonconformities resulting from unauthorized modifications to the software or any Owner interfacing.

6. Emissions Warranty. The Product may be covered under an emissions warranty specified by the U.S. Environmental Protection Agency and/or the California Air Resources Board. The terms of the warranty, if applicable, may be accessed by following the link: <https://www.mtu-solutions.com/eu/en/technical-information/emissions-warranty.html>. Any such Emissions Warranty is incorporated herein by reference in its entirety to the extent and with the same force as if fully set forth herein. The Product, if certified, may only be certified to comply with the required country or region-specific emission regulations. Where applicable, the Product is only certified to those specific emission regulations/standards which are clearly stated in the respective MTU America Inc. defined technical specifications. IT IS THE OWNER'S SOLE RESPONSIBILITY TO ENSURE THAT THE EXPORT/IMPORT, INSTALLATION, AND USE OF THE PRODUCT(S) COMPLIES WITH THE APPLICABLE EMISSION REGULATIONS IN THE COUNTRY OR REGION WHERE THE PRODUCT(S) WILL BE USED.

MTU America Inc. Two (2) Year / 3,000 Hour Basic Standby Limited Warranty Standby (3D) / Prime (3B) / Data Center Continuous Power (3F)

7. Disclaimers

LIMITATION OF WARRANTIES: THIS LIMITED WARRANTY IS GIVEN EXPRESSLY AND IN PLACE OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, FREEDOM FROM INFRINGEMENT OR THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, REPRESENTATIONS, OR WARRANTIES NOT SPECIFIED HEREIN.

THIS LIMITED WARRANTY, THE OBLIGATIONS OF MTU AND THE RIGHTS AND REMEDIES OF THE OWNER SET FORTH IN THIS LIMITED WARRANTY ARE EXCLUSIVE AND ARE EXPRESSLY IN LIEU OF, AND THE OWNER HEREBY WAIVES AND RELEASES ALL OTHER OBLIGATIONS, WARRANTIES (INCLUDING WARRANTY AGAINST REDHIBITORY DEFECTS), REPRESENTATIONS OR LIABILITIES, EXPRESS OR IMPLIED, ARISING BY LAW IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY CLAIMS ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE PERFORMANCE OF THIS LIMITED WARRANTY OR FROM THE DESIGN, MANUFACTURE, SALE, REPAIR, LEASE OR USE OF THE PRODUCT, ANY COMPONENT THEREOF AND SERVICES DELIVERED OR RENDERED HEREUNDER OR OTHERWISE.

IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT OR WARRANTY, ALLEGED NEGLIGENCE, OR OTHERWISE, SHALL MTU BE SUBJECT TO LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, DAMAGE TO THE PRODUCT, OR OTHER PROPERTY, COMMERCIAL LOSSES, LOST PROFITS, LOSS OF USE, INCONVENIENCE, LOSS OF TIME, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, DOWNTIME, OR CLAIMS OF CUSTOMERS.

MTU AMERICA INC. SHALL NOT BE LIABLE FOR ANY CLAIM GREATER IN AMOUNT THAN THE PURCHASE PRICE OF THE PRODUCT.

8. The Owner is entitled to rectify the defect or to have it rectified by third parties only in urgent cases where operational safety is at risk or in order to prevent disproportionately extensive damage; provided that Owner has informed MTU America Inc. and obtained prior written consent from MTU America Inc. In such cases, MTU America Inc. shall, in its sole discretion, reimburse the costs incurred by the Owner up to an amount equivalent to the costs MTU America Inc. would have incurred had it remedied the defect itself.
9. This Limited Warranty gives the Owner specific legal rights, and the Owner may also have other rights, which vary from state to state. Some states do not allow warranty duration limitations and/or certain exclusions or limitation of incidental or consequential damages. Therefore, the previously expressed exclusion(s) may not apply to Owner. If any one or more of the provisions contained in this Limited Warranty shall be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained therein shall not in any way be affected or impaired thereby.
10. This Limited Warranty is governed by the laws of the State of Minnesota without regard to its conflicts of law principles and excluding the United Nations Convention for the International Sale of Goods.
11. In order to obtain performance of an MTU America Inc. warranty obligation, the Owner should contact the nearest MTU authorized distributor, dealer, or service outlet for instructions. To find the location of the nearest MTU authorized distributor, dealer, or service outlet call +1 248-560-8000 or write to: MTU America Inc. Warranty Department, 39525 MacKenzie Drive, Novi, MI 48377.